



THE COMMITTEE ON ENERGY AND COMMERCE

INTERNAL MEMORANDUM

May 27, 2011

To: Members, Committee on Energy and Commerce

From: Committee Staff

Re: Markup of H.R. 1705, the Transparency in Regulatory Analysis of Impacts on the Nation Act of 2011 (TRAIN Act) and Markup of H.R. 2021, the Jobs and Energy Permitting Act of 2011 (JEPA)

On Wednesday, June 1, 2011 at 4:00 p.m. and Thursday, June 2, 2011 at 9:00 a.m., in 2123 Rayburn House Office Building, the Committee on Energy and Commerce will meet to consider and mark up H.R. 1705, the Transparency in Regulatory Analysis of Impacts on the Nation Act of 2011 (“TRAIN Act”) and a H.R. 2021, the Jobs and Energy Permitting Act of 2011 (“JEPA”).

Members must submit any amendments they may have two hours before they are offered during the markup. Members may submit amendments by email to: mike.bloomquist@mail.house.gov. Any information with respect to an amendment’s parliamentary standing (e.g., its germaneness) should be submitted at this time as well.

I. H.R. 1705, THE TRANSPARENCY IN REGULATORY ANALYSIS OF IMPACTS ON THE NATION ACT OF 2011

On March 31, 2011, Representatives Sullivan and Matheson released a discussion draft of the “Transparency in Regulatory Analysis of Impacts on the Nation Act of 2011” (“TRAIN Act”). On May 4, 2011, Mr. Sullivan and Mr. Matheson introduced H.R. 1705. On May 24, 2011, the Subcommittee on Energy and Power reported the bill and favorably recommended it to full committee, as amended.

TRAIN Act would establish an interagency committee (the “Committee”) for the cumulative analysis of regulations that impact energy and manufacturing in the United States. The bill directs the Committee to analyze and report on the cumulative and incremental impacts of certain rules and actions of the Environmental Protection Agency (EPA).

Section 2 of TRAIN Act sets forth the composition of the Committee, which will include:

- The Secretary of Agriculture, acting through the Chief Economist;
- The Secretary of Commerce, acting through the Under Secretary for International Trade;
- The Secretary of Labor, acting through the Commissioner of the Bureau of Labor Statistics;

- The Secretary of Energy, acting through the Administrator of the Energy Information Administration;
- The Secretary of the Treasury, acting through the Deputy Assistant Secretary for Environment and Energy of the Department of the Treasury;
- The Administrator of the EPA;
- The Chairman of the Council of Economic Advisors;
- The Chairman of the Federal Energy Regulatory Commission;
- The Administrator of the Office of Information and Regulatory Affairs;
- The Chief Counsel for Advocacy of the Small Business Administration; and,
- The Chairman of the United States International Trade Commission, Office of Economics.

The Committee will be chaired by the Secretary of Commerce in consultation with the Secretary of the Treasury, acting through the Deputy Assistant Secretary for Environment and Energy and the Chairman of the International Trade Commission. TRAIN Act directs the Committee to consult with and consider pertinent reports issued by the North American Electric Reliability Corporation. The Committee will terminate 90 days after submitting a final report.

Section 3 of TRAIN Act describes the analyses that the Committee is required to conduct, including an estimate of the cumulative impacts of covered rules and actions that are proposed or finalized by January 1, 2012. The Committee will also conduct an analysis of the incremental impact of each covered rule proposed but not finalized relative to that cumulative baseline.

The Committee's analyses will include the impacts of the covered rules and actions with regard to:

- U.S. competitiveness, including energy intensive and trade sensitive industries;
- other cumulative cost and cumulative benefit impacts;
- changes in electricity prices;
- changes in fuel prices;
- impact on national, State, and regional employment both in short- and long-term; and,
- reliability and adequacy of bulk power supply.

The analyses will also include a discussion of the key uncertainties and assumptions associated with each estimate, a sensitivity analysis, and a discussion of the cumulative impact of the covered rules and actions on consumers, small businesses, regional economies, state, local, and tribal governments, local and industry-specific labor markets, and agriculture.

The analyses must be conducted with best available methods and best available data.

TRAIN Act specifies that the following EPA rules and actions are to be covered in the report.

- Greenhouse Gas New Source Performance Standards for Petroleum Refineries and Utilities;
- Prevention of Significant Deterioration and Title V permitting for GHG Emissions;
- Ambient Air Quality Standards for Ozone, Particulate Matter, Sulfur Dioxide and Nitrogen Dioxide;
- Clean Air Transport Rule for 28 Eastern States;
- Boiler Maximum Available Control Technology for Major and Area Sources;
- Electric Generating Units Maximum Available Control Technology;
- Coal Combustion Residuals;
- Construction Site Effluent Limitation Guidelines under the Clean Water Act;
- Revised Cooling Water Intake Rule under Clean Water Act Section 316(b); and,
- Regional Haze.

Section 4 specifies reporting and public comment opportunities. A preliminary report is to be made public and submitted to Congress by January 31, 2012. Public comments will be accepted on the preliminary report for 90 days. The final report is then due by August 1, 2012, including revisions from public comments.

II. H.R. 2021, THE JOBS AND ENERGY PERMITTING ACT of 2011

On April 6, 2011, Representative Gardner released a discussion draft of the “Jobs and Energy Permitting Act of 2011” (“JEPA”). On May 24, 2011, the Subcommittee on Energy and Power reported the bill and favorably recommended it to the full committee. On May 26, 2011, Mr. Gardner and Mr. Green, together with other Members, introduced the discussion draft, with amendment, as H.R. 2021.

Section 2 of JEPA would amend Section 328(a)(1) of the Clean Air Act (CAA) to clarify that the air quality impacts of any Outer Continental Shelf source (“OCS Source”) are to be measured solely with respect to the impacts in the corresponding onshore area.

Section 3 of JEPA amends Section 328(a)(4)(C) of the CAA to clarify that while the emissions from any vessel servicing or associated with an OCS Source are to be considered direct emissions from such source, such vessels are not subject to emissions control requirements under the CAA’s Prevention of Significant Deterioration of Air Quality Program. Also, Section 3 makes clear that an OCS Source is established at the time when drilling commences and ceases to exist when drilling activity ends.

Section 4 of JEPA amends Section 328 of the CAA by adding a new subsection that requires final agency action be taken on platform or drill ship exploration OCS Source permits no later than 6 months after a completed application is filed, with no administrative stay of the permit after such time period. In addition, the new subsection states expressly that the Environmental Appeals Board of the Environmental Protection Agency does not have authority to consider platform or drill ship exploration OCS Source permits. Final agency action is to be considered nationally applicable under Section 307(b) of the CAA without additional

administrative review except for reconsideration filed by the applicant under Section 307(d)(7)(B) of the CAA.

III. STAFF CONTACTS

If you have any questions regarding this markup, please contact Maryam Brown or Heidi King at 5-2927.